

OCT 9 1939

CHARLES CLARKE COOPER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1939

No. 8

ZIFFRIN, INCORPORATED - - - - Appellant,

vs.

JAMES W. MARTIN, Commissioner of
Revenue of the Commonwealth of
Kentucky, et al. - - - - Appellees.

SUPPLEMENTAL BRIEF FOR APPELLEES

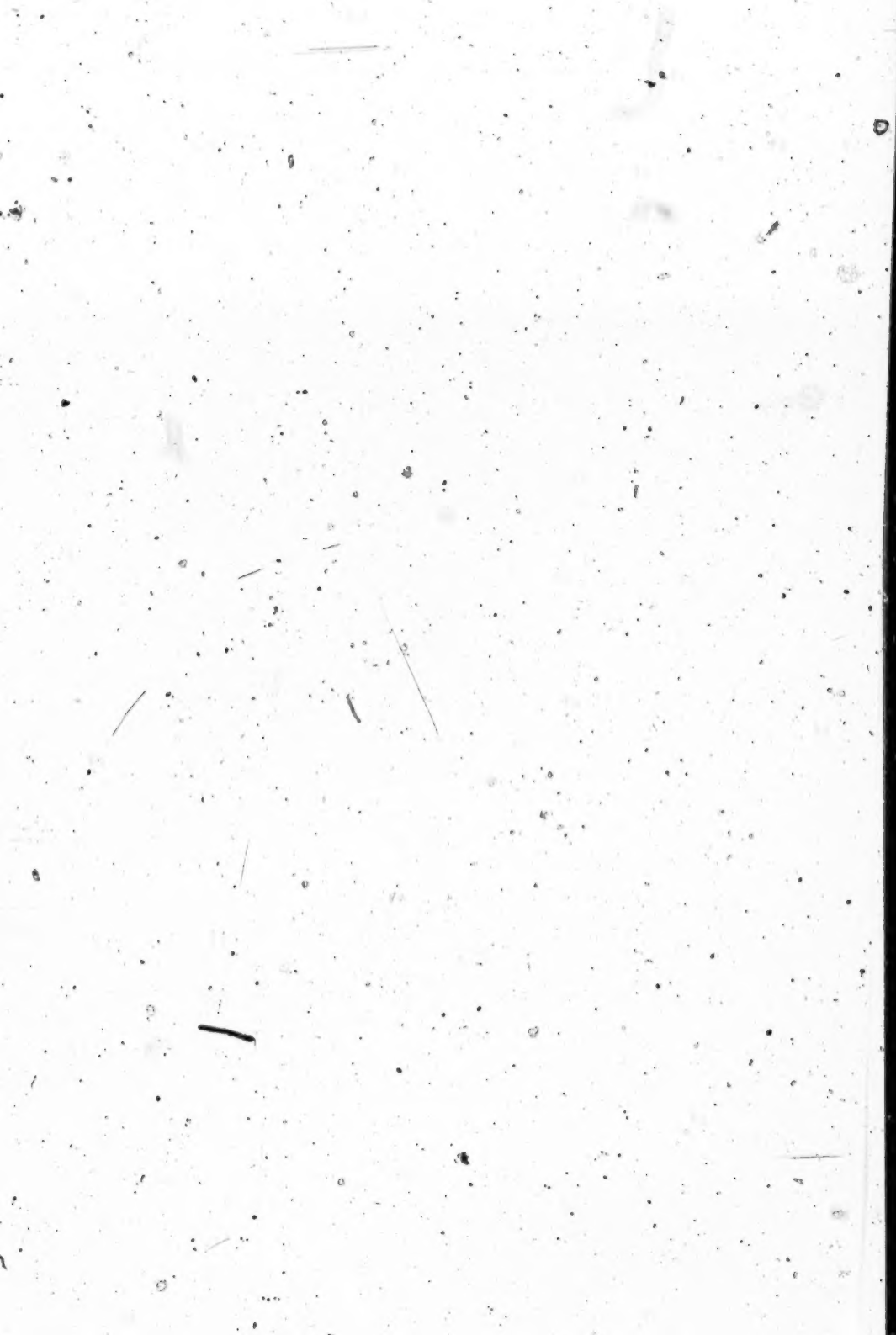
HUBERT MEREDITH,
Attorney General of the Commonwealth
of Kentucky,

M. B. HOLIFIELD,
Assistant Attorney General of the Com-
monwealth of Kentucky,

✓ HARRY D. FRANCE,
Assistant Attorney General of the Com-
monwealth of Kentucky,

✓ WILLIAM HAYES,
Assistant Attorney General of the Com-
monwealth of Kentucky,

By: H. APPLETON FEDERA, Of Counsel,
Counsel for Appellees.



SUBJECT INDEX

	Pages
1. REPLY TO APPELLANT'S CONTENTION THAT NEITHER THE CONTROL LAW NOR THE FACTS SUPPORT THE CONTENTION THAT THE WHISKEY INVOLVED WAS MANUFACTURED UPON CONDITION THAT IT WOULD BE CARRIED ONLY BY THE DISTILLER OR BY COMMON CARRIERS.....	1-6
2. REPLY TO THE CONTENTION OF APPELLANT THAT THE REQUIREMENT OF A COMMON CARRIER'S CERTIFICATE IS NOT A REASONABLE REGULATION.....	6-9
3. REPLY TO APPELLANT'S ARGUMENT OF THE SEPARABILITY OF THE PENALTIES	9
4. CONCLUSION	9-10



TABLE OF CASES, STATUTES

Pages

1. Kentucky Statutes.

Alcoholic Beverage Control Law of 1938, being Chapter 2, page 48, et seq., of 1938 Session Acts of General Assembly of the Commonwealth of Kentucky, and being Baldwin's 1938 Supplement to Carroll's 1936 Kentucky Statutes, Section 2554b-97, et seq.

Sec. 36	4, 5
Sec. 53	2

Kentucky Motor Vehicle Transportation Act of 1932 as amended, being Chapter 104, page 514, et seq., of 1932 Session Acts of General Assembly and being Carroll's Kentucky Statutes, 1936 Edition, Sections 2739j-42, et seq., as amended by subsequent Session Acts as shown by Baldwin's 1938 Supplement to Carroll's 1936 Kentucky Statutes, Sections 2739j-42, et seq.

Sec. 2739j-49-52	7
Sec. 2739j-55	7
Sec. 2739j-94 (Chapter 64, Acts of 1936 General Assembly of Kentucky)	8

2. Cases.

Kidd v. Pearson, 128 U. S. 1, 32 L. Ed. 346.....	6
Mugler v. Kansas, 123 U. S. 623, 31 L. Ed. 205	2
Samuels v. McCurdy, 267 U. S. 188, 69 L. Ed. 568	2, 3, 6
Sligh v. Kirkwood, 237 U. S. 52, 59 L. Ed. 835	5, 6

Supreme Court of the United States

OCTOBER TERM, 1939

No. 8

ZIFFRIN, Incorporated - - - - - *Appellant,*

vs.

JAMES W. MARTIN, Commissioner of Revenue
of the Commonwealth of Kentucky, et al. - *Appellees.*

SUPPLEMENTAL BRIEF FOR APPELLEES

Believing that the reply brief of appellant raises certain questions which should be answered, and further believing that certain sections of the Control Law have not as yet been called to the attention of this Court, appellees ask leave to file this supplemental brief.

I.

REPLY TO APPELLANT'S CONTENTION THAT NEITHER THE CONTROL LAW NOR THE FACTS SUPPORT THE CONTENTION THAT THE WHISKEY INVOLVED WAS MANUFACTURED UPON CONDITION THAT IT WOULD BE CARRIED ONLY BY THE DISTILLER OR BY COMMON CARRIERS.

On page 12 of appellant's reply brief we find the contention made that liquor manufactured prior to July 1, 1938,

could not be subject to a provision that no liquor other than that trafficked in in accordance with the 1938 Alcoholic Beverage Control Law might be legally transported.

It seems to appellees that an almost identical contention was made in the case of *Samuels v. McCurdy*, 267 U. S. 188, 69 L. Ed. 568. In that case this Court had before it a Georgia statute making it unlawful for a person to possess intoxicating liquors. The liquors in question had been lawfully acquired previous to its enactment and were for consumption as a beverage in the home of the purchaser.

In speaking of *Mugler v. Kansas*, 123 U. S. 623, 31 L. Ed. 205, this Court in the *Samuels* case said:

"In view of this language and the agreed statement of facts, the decision necessarily was that the sale of beer made and owned before the prohibition law could be punished by that law as a nuisance and that no compensation was necessary, if the legislature deemed this to be necessary for the health and morals of the community."

Further the opinion writer, Mr. Chief Justice Taft, said:

"The Legislature had this power whether it affects liquor lawfully acquired before the prohibition or not."

Section 53, Chapter 2, Acts of 1938 (Section 2554b-151, Baldwin's 1938 Kentucky Statute Supplement) provides in part:

"The following property is hereby declared to be contraband . . . (2) Any spirituous, vinous, or malt liquors in the possession of any one not entitled to possession of the same under the provisions of this Act."

Clearly this section does not distinguish between liquors manufactured or acquired previous to the effective date of this Act and those manufactured or acquired after the effective date of the Act. Thus any liquor, no matter when made or acquired, is subject to the provisions of this section if in the possession of an unauthorized shipper. ◊

It is our opinion that the *Samuels* case and the section quoted above of the Alcoholic Control Law show first, that liquor acquired or manufactured previous to the passage of the Act may be subject to any conditions which the Legislature subsequently sees fit to place upon the use or traffic therein. Secondly, this section quoted above indicates that the General Assembly declared all liquors, no matter when manufactured or acquired, in the possession of an unauthorized shipper to be contraband; and although the Kentucky General Assembly did not specifically say that property rights in such liquors were taken away, the General Assembly by the provisions of this section certainly did in fact take away property rights. It will be noted that in this section under certain conditions liquors not in the possession of anyone entitled thereto may be taken without search warrant, and further, the title thereto may be vested in the Alcoholic Beverage Control Board without action by a court.

We submit that the effect of this section is exactly the same as one section of the Georgia law in question in the *Samuels* case. We further submit that the General Assembly need not have expressly said, "We are taking away property rights in liquor," when the provisions of that section in fact did such.

On page 15 of appellant's reply brief we find the statement that the concluding paragraph of the contraband section not less than ten times speaks of whiskey carried by an unlicensed carrier as property. We ask the Court to

examine this section. We believe that the Court will find that the Kentucky General Assembly was merely using the word "property" as a general term to designate several specific items such as firearms, stills, materials, equipment, and spirituous, vinous, or malt liquors. The General Assembly had no intention of binding themselves by the use of this general term to prevent the reduction of property rights in liquors.

On page 14 of appellant's reply brief we find this statement:

"Previously we have assumed that the Control Law appends to the grant of the privilege of manufacturing the condition of transportation by common carrier. The truth is that in according the privilege and distiller's license to the manufacturer, the Control Law does no such thing."

This statement entirely overlooks Section 36, Chapter 2, Acts of 1938 (Section 2554b-134, Baldwin's 1938 Kentucky Statute Supplement) which provides:

"In addition to such other information as the Alcoholic Beverage Board may by its rules and regulations require, every application for a license under this Act shall contain the following information, given under oath:"

"(5) A statement that the applicant will in all respects and in good faith conscientiously abide by all the provisions of this Act and of any other Act or ordinance relating to alcoholic beverages which may be in force in the location at which the applicant seeks to do business, as well as all rules and regulations of the State Alcoholic Beverage Board . . ."

"(7) Any false material statement contained in an application shall be ground for refusal to issue a license, or if the falsity of the statement be not dis-

covered until after a license has been issued, revocation of such license shall be mandatory."

Surely this section conditions the holding of a license to the applicant conscientiously abiding by all the provisions of the Act, one of which is that only licensees, railroads, and railway express companies may haul intoxicating liquors. Thus it must be that the distiller's license is conditioned upon obeying this provision.

We ask the Court to note that this section requires the statement that the applicant will conscientiously abide by the Act. *Could it be considered abiding by the Act if a licensee thereunder were allowed to help unlicensed persons to do acts which this law requires licenses for the doing thereof?* Surely this was not the intention of the General Assembly of Kentucky, and we cannot believe that this Court will construe this Act so that one licensee thereunder may act in a manner which would render the enforcement of the remainder of the Act more difficult. Further, we wish to call to the Court's attention the fact that all licenses issued under this Act expressly carried a provision that the licensee is subject to the laws, rules, and regulations of the Commonwealth of Kentucky.

But assuming that there was no condition on the manufacturer to keep this liquor in legal channels, still appellees contend that the case of *Sligh v. Kirkwood*, 237 U. S. 52, 59 L. Ed. 835 would be authority that the Act in question was constitutional. In that case as we have already shown in our principal brief the Court did not prohibit the picking of unripe citrus fruits for purposes of exportation, which, we believe, would be similar to the condition of the manufacture of intoxicating liquors for exportation. What was prohibited in that case was the *shipping or delivering for shipment out of the state* of part of the citrus fruits. This, we

believe, is the nearly exact situation in the controversy at bar.

Thus even if liquors were not conditionally manufactured under this Act, still it would seem that they cannot be shipped out of the state or delivered for shipment if the state sees fit to prohibit their shipment. In *Samuels v. McCurdy*, supra, as we have already stated above, liquors acquired previous to the effective date of an act prohibiting their use for all but certain purposes were just as much affected as liquors acquired after the effective date of the act. These cases, it would seem to the appellees, overrule the dictum in *Kidd v. Pearson*, 128 U. S. 1, 32 L. Ed. 346, (Appellant's reply brief, page 4) to the effect that:

"The proposition that, supposing the goods were once lawfully called into existence, it would then be beyond the power of the State either to forbid or impede their exportation, may be conceded."

Certainly *Sligh v. Kirkwood* and *Samuels v. McCurdy*, supra, have reached a different conclusion from this.

II.

REPLY TO THE CONTENTION OF APPELLANT THAT THE REQUIREMENT OF A COMMON CARRIER'S CERTIFICATE IS NOT A REASONABLE REGULATION.

On page 19 of appellant's reply brief we find this statement:

"The brief for appellees shows that Kentucky, in efforts to prevent diversion, relies upon written reports (pp. 9, 10) rather than upon actual policing of the highways (p. 5)."

Had counsel for appellant read our principal brief as far as page 50 he would have found the statement:

"Appellees might point out that this control law provides for 'Field Representatives' who 'shall have full police powers such as are now vested in sheriffs and other peace officers.' (Section 9, Chapter 2, Acts of 1938, Section 2554b-105, Baldwin's 1938 Kentucky Statute Supplement.)"

On pages 19 and 20 of appellant's reply brief we find a statement which might easily be misconstrued:

"Motor Carrier Act, 1935, U. S. C., Title 49, Section 303, sub-sec. a, sub-parags. 14, 15 (App. to our principal brief, p. 25), defines the two classes and distinguishes between them on the basis whether the carrier does, or does not, undertake to carry 'for the general public.' No mention whatever is made of termini or schedules with respect to either class, and sub-paragraph 14 expressly contemplates transportation by common carriers 'over regular or irregular routes.'"

This statement loses sight of the express provisions of the Kentucky law which contemplates fixed routes between definite termini. (See Carroll's Kentucky Statutes, 1936 Edition, Sections 2739j-55 and 2739j-49, 50, 51, 52, all being sections of Chapter 104, Acts of 1932.)

On page 20 of appellant's reply brief we find this statement:

"The complaint shows Ziffrin's operations in Kentucky to be conducted within the corporate limits of the city of Louisville, a city of the first class, and within a radius of ten miles of its limits. Under Kentucky Statutes, Section 2739j-94 (Appendix to our principal brief, p. 20), even a common carrier so operating would

be exempt from the provisions of the Kentucky Motor Vehicle Transportation Act, would not be required to obtain a Common Carrier's Certificate, and would be under no obligation to run between definite termini, on prescribed routes or on definite schedules."

We believe that appellant's counsel has misread the section to which he refers. This section provides:

"There shall be exempted from the provisions of this Act: . . . ;

"Two. Motor vehicles for hire operating exclusively within the limits of a city or incorporated town or within ten miles of its limits. . . ." (Chapter 64, Acts of 1936, Section 2739j-94, Carroll's Kentucky Statutes; 1936 Edition.)

This provision does not say "operating in Kentucky within ten miles of the limits of a city." It says "*exclusively* operating within the limits of a city or within ten miles of its limits." The obvious purpose of this provision was to exempt city delivery services who might make short runs out of the city to suburban areas.

If we go to the complaint we find that appellant alleges it makes trips to Chicago which is more than ten miles from the city limits of Louisville.

Clearly then appellant does not come within the exemption and so insofar as this controversy is concerned, this point should remain moot.

Thus contrary to the contention of counsel for appellant, the Kentucky General Assembly did not exempt common and contract carriers from securing a Kentucky certificate except in one situation, that situation being city delivery service; and as we have pointed out, the appellant

in this situation cannot lay claim to being within this exemption.

III.

REPLY TO APPELLANT'S ARGUMENT ON THE SEPARABILITY OF THE PENALTIES.

On page 26 we find this highly unusual statement:

"Were this Court to rule as urged by appellees' counsel, then as surely as in the disparaged rate cases, Ziffirin could test the penalties' validity only by violation."

This statement entirely overlooks the fact that if the provisions regarding transporters are valid, then there is no reason for testing the validity of a completely separate section providing a penalty of which there has been no attempted enforcement. Even if the penalty provisions were invalid, still it cannot be held the appellant in this controversy may carry intoxicating liquors unless he complies with the provisions of an entirely separate section regarding transportation of such liquors.

CONCLUSION

In conclusion we wish to call to the attention of this Court the fact that the Commonwealth of Kentucky is not attempting to harm business of contract carriers but is only seeking to protect its people from the known evils intoxicating liquors may produce if uncontrolled. One interest must be balanced against the other.

To the contrary appellant is seeking to tear down this protective regulation rather than comply therewith because it feels that it would be more expensive to it to comply.

We hope that this Court will not feel the morals of Kentucky less important than a handful of silver.

Respectfully submitted,

HUBERT MEREDITH, *Attorney General*

M. B. HOLIFIELD, *Asst. Atty. General*

HARRY D. FRANCE, *Asst. Atty. General*

WILLIAM HAYES, *Asst. Atty. General*

By: H. APPLETON FEDER, *Of Counsel*

P 4

SUPREME COURT OF THE UNITED STATES.

No. 8.—OCTOBER TERM, 1939.

Ziffrin, Incorporated, Appellant, Hyde Reeves, vs. James W. Martin , Commissioner of Revenue of The Commonwealth of Kentucky, et al.	}	Appeal from the District Court of the United States for the Eastern District of Kentucky.
---	---	--

[November 13, 1939.]

Mr. Justice McREYNOLDS delivered the opinion of the Court.

Since March 1933 appellant, an Indiana corporation, has continuously received whiskey from distillers in Kentucky for direct carriage to consignees in Chicago. It has permission under the Federal Motor Carrier Act, 1935,¹ to operate as a contract carrier, and claims the right to transport whiskey as heretofore, notwithstanding inhibitions of the Kentucky Alcoholic Beverage Control Law approved March 7, 1938.² By this proceeding it seeks to restrain officers of the State from enforcing the contraband and penal provisions of that enactment.

The bill charges that to enforce the Control Law would impair appellant's rights under the Commerce Clause, Federal Constitution, and deprive it of the Due Process and Equal Protection guaranteed by the Fourteenth Amendment. The District Court—three judges sitting—sustained a motion to dismiss. A direct appeal brings the matter here.

The Statute is a long, comprehensive measure (123 sections) designed rigidly to regulate the production and distribution of alcoholic beverages through means of licenses, and otherwise. The manifest purpose is to channelize the traffic, minimize the commonly attendant evils; also to facilitate the collection of revenue. To this end manufacture, sale, transportation, and possession are permitted only under carefully prescribed conditions and subject to

¹ Aug. 9, 1935, c. 498, 49 Stat. 543; U. S. C. A. Title 49, sec. 301, et seq.

² Kentucky Acts 1938, Ch. 2; Baldwin's Supp. to Carroll's Statutes 1936, Ch. 81, sec. 2554b-1, et seq.

constant control by the state. Every phase of the traffic is declared illegal unless definitely allowed. The property becomes contraband upon failure to observe the statutory requirement and whenever found in unauthorized possession.

Section 52 provides—"It shall be a criminal offense for any person to manufacture, store, sell, purchase, transport or otherwise in any manner traffic in alcoholic beverages as that term is defined in this Act, without first having paid to the Department of Revenue at its office in Frankfort, the license tax required by this Act, and without first having obtained the license required by this Act."³

Section 53 declares to be contraband: "(2) Any spirituous, vinous or malt liquors in the possession of any one not entitled to possession of the same under the provisions of this Act."⁴ Peace officers are authorized to seize such contraband and institute proceedings for forfeiture.

Licenses are authorized (sec. 18(1)-(9))⁵ for distillers, rectifiers, vintners, wholesalers, retailers, and (sec 18(7))⁶ for the transportation of liquors to and from any point in the state. Privileges which may be exercised under these are definitely set out.

³ Baldwin's Supplement to Carroll's Kentucky Statutes 1936, sec. 2554b-150.

⁴ *Supra* Note (3), sec. 2554b-151. "The following property is hereby declared to be contraband: (1) Any illicit still designed for the unlawful manufacture of intoxicating liquors, or any apparatus designed for the unlawful manufacture of spirituous, vinous, malt or intoxicating liquors. An illicit still or apparatus designed for the unlawful manufacture of intoxicating liquors shall include (a) An outfit or parts of an outfit commonly used, or intended to be used, in the distillation or manufacture of spirituous, vinous or malt liquors which is not duly registered in the office of a collector of Internal Revenue for the United States, and the burden of proving that same is so registered shall be on the defendant or defendants under charge; (b) any and all material, equipment, implements, devices, firearms, and other property used or intended for use, directly and immediately, in connection with the illicit traffic in alcoholic beverages. (2) Any spirituous, vinous or malt liquors in the possession of any one not entitled to possession of the same under the provisions of this Act. (3) Any spirituous, vinous or malt liquors in the possession of any one and to which the revenue stamps have not been affixed as and when required by the provisions of the Alcoholic Beverage Tax Act, sections 4281c-1 to and including 4281c-25, Carroll's Kentucky Statutes, one thousand nine hundred thirty-six (1936) edition. (4) Any distilled spirits, wine or malt beverage in a container of a size prohibited by law or prohibited the particular party in whose possession same is found. (5) Any distilled spirits or wine kept in an unauthorized place within any licensed premises under the provisions of section 77 of this Act. (6) Any motor vehicle, water or air craft, or other vehicle in which any person is illegally possessing or transporting alcoholic beverages."

⁵ *Supra* Note (3), sec. 2554b-114.

⁶ *Supra* Note (5).

Section 21—"A distiller's, rectifier's or Vintner's license, as the case may be, shall authorize the holder thereof, at the premises specifically designated in the license, to engage in the business of distiller, rectifier, or vintner, as the case may be, as those terms are defined in this Act, and to transport for himself only any alcoholic beverage which he is authorized under this license to manufacture or sell. . . ."⁷

Section 22—"Sales and deliveries of alcoholic beverages may be made at wholesale, and from the licensed premises only, . . .

(3) by licensed distillers, rectifiers or vintners for export out of the Commonwealth; provided, no distiller, rectifier or vintner, shall sell or contract to sell, give away or deliver any alcoholic beverages to any person, who is not duly authorized by the law of the State of his residence and of the Federal Government if located in the United States, to receive and possess said alcoholic beverages; and in no event shall he sell or contract to sell, give away or deliver, any of his products to any retailer or consumer in Kentucky."⁸

Section 27—"A Transporter's License shall authorize the holder to transport distilled spirits and wine to or from the licensed premises of any licensee under this Act, provided" etc.⁹ Section 54(7)—"A Transporter's License as provided for in section 18(7) of this Act shall be issued only to persons who are authorized by proper certificate from the Division of Motor Transportation in the Department of Business Regulation to engage in the business of a common carrier."¹⁰

Section 89—"No person except a railroad company or railway express company shall transport or cause to be transported any distilled spirits or wine, otherwise than as provided in this Act, except such beverages may be transported by the holder of any license authorized by section 18 of this Act, from and to express or freight depots to and from the premises covered by the license of the person so transporting distilled spirits or wine."¹¹

⁷ *Supra* Note (3), sec. 2554b-118.

⁸ *Supra* Note (3), sec. 2554b-119.

⁹ *Supra* Note (3), sec. 2554b-124.

¹⁰ *Supra* Note (3), sec. 2554b-154(7).

¹¹ *Supra* Note (3), sec. 2554b-190.

A license may only issue (sec. 33)¹² upon an application which incorporates (sec. 36(5))¹³ a promise that "the applicant will in all respects and in good faith conscientiously abide by all the provisions of this Act and of any other Act or ordinance relating to alcoholic beverages" etc. Also, (sec. 37)¹⁴ there must be a bond "conditioned that such applicant, if granted the license sought, will not suffer or permit any violation of the provisions of this Act" etc.

Having been denied a Common Carrier's Certificate, appellant sought and was refused a transporter's license because it held no such certificate.

In sum, counsel for appellant say: The complaint charges that the Control Law is unconstitutional because repugnant to the Commerce, Due Process and Equal Protection Clauses of the Federal Constitution in that, under pain of excessive penalties, it undertakes to prevent an authorized interstate contract carrier from continuing an established business of transporting exports of liquors from Kentucky in interstate commerce exclusively. Also: Intoxicating liquors are legitimate articles of interstate commerce unless Federal law has declared otherwise. Interstate commerce includes both importation of property within a state and exportation therefrom. Prior to the Wilson and Webb-Kenyon Acts, and the Twenty-first Amendment, the powers of the states over intoxicants in both of these movements were limited by the Commerce Clause. These enactments relate to importations only. Exports remain, as always, subject to that clause. "Although a state may prohibit the manufacture of liquor, if a state permits distillation, sale and transportation—as Kentucky does—the rule of law is that the state may not annex to its consent to manufacture and sell the unconstitutional ban upon carriage of interstate exports of liquors by contract carriers."

The court below rejected appellant's insistence and affirmed the asserted power of the state. Like conclusions were approved in *Commonwealth v. One Dodge Motor Truck*, 326 Pa. State Reports 120 (123 Pa. Superior Ct. Reports 311); *Clark, et al. v. State ex rel. Bobo*, 172 Tenn. 429, 113 S. W. (2d) 374; *Jefferson Co. Dis. Co. v. Clifton*, 249 Ky. 815.

¹² *Supra* Note (3), sec. 2554b-131.

¹³ *Supra* Note (3), sec. 2554b-134(5).

¹⁴ *Supra* Note (3), sec. 2554b-135.

The Twenty-first Amendment sanctions the right of a state to legislate concerning intoxicating liquors brought from without, unfettered by the Commerce Clause. Without doubt a state may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained, or the use to which they are to be put. Further, she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them. *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311, 320; *Crane v. Campbell*, 245 U. S. 304, 307; *Seaboard Air Line Ry. v. North Carolina*, 245 U. S. 298, 304; *Samuels v. McCurdy*, 267 U. S. 188, 197-198.

Having power absolutely to prohibit manufacture, sale, transportation, or possession of intoxicants, was it permissible for Kentucky to permit these things only under definitely prescribed conditions. Former opinions here make an affirmative answer imperative. The greater power includes the less. *Seaboard Air Line Ry. v. North Carolina*, *supra*. The state may protect her people against evil incident to intoxicants, *Mugler v. Kansas*, 123 U. S. 623; *Kidd v. Pearson*, 128 U. S. 1; and may exercise large discretion as to means employed.

Kentucky has seen fit to permit manufacture of whiskey only upon condition that it be sold to an indicated class of customers and transported in definitely specified ways. These conditions are not unreasonable and are clearly appropriate for effectuating the policy of limiting traffic in order to minimize well known evils, and secure payment of revenues. The statute declares whiskey removed from permitted channels contraband subject to immediate seizure. This is within the police power of the state; and property so circumstanced cannot be regarded as a proper article of commerce. *Sligh v. Kirkwood*, 237 U. S. 52, 59; *Clason v. Indiana*, 306 U. S. 439.

In effect we are asked by injunction to allow a distiller to do what the statute prohibits—deliver to an unauthorized carrier. Also to enable a carrier to do what it is prohibited from doing—receive and transport within the state.

Kidd v. Pearson, *supra*: An Act of the Iowa Legislature in general terms forbade manufacture or sale of intoxicating liquor but permitted these for mechanical or other purposes. An injunction

was approved which restrained Kidd from operating his distillery although he claimed the output would be exported for sale beyond the state. This Court said: "Whether a State, in the exercise of its undisputed power of local administration, can enact a statute prohibiting within its limits the manufacture of intoxicating liquors, except for certain purposes, is not any longer an open question before this court. . . . The police power of a State is as broad and plenary as its taxing power; and property within the State is subject to the operations of the former so long as it is within the regulating restrictions of the latter."

The doctrine of that case has been often applied. *Geer v. Connecticut*, 161 U. S. 519; *Ripley v. Texas*, 193 U. S. 504, 509; *Hudson Water Co. v. McCarter*, 209 U. S. 349, 357; "A man cannot acquire a right to property by his desire to use it in commerce among the States. Neither can he enlarge his otherwise limited and qualified right to the same end"; *Sligh v. Kirkwood*, 237 U. S. 52; *State Board v. Young's Market Co.*, 299 U. S. 59, 63; *Clason v. Indiana*, 306 U. S. 439.

The two cases last cited recognize that the State may decline to consider certain noxious things legitimate articles of commerce, and inhibit their transportation. Property rights in intoxicants depend on state laws and cease if the liquor becomes contraband.

We cannot accept appellant's contention that because whiskey is intended for transportation beyond the state lines the distiller may disregard the inhibitions of the statute by delivery to one not authorized to receive; that the carrier may set at naught inhibitions and transport contraband with impunity.

The point suggested in respect of Due Process is not in accord with what has been decided in the cases above referred to.

The record shows no violation of Equal Protection. A licensed Common Carrier is under stricter control than an ordinary contract carrier and may be entrusted with privileges forbidden to the latter.

Here the state law creates no discrimination against interstate commerce. It is subjected to the same regulations as those applicable to intrastate commerce.

The Motor Carrier Act of 1935 is said to secure to appellant the right claimed, but we can find nothing there which undertakes to destroy state power to protect her people against the evils of intoxi-

cants or to sanction the receipt and conveyance of articles declared contraband. The Act has no such purpose or effect.

The power of a state to regulate her internal affairs notwithstanding the consequent effect upon interstate commerce was much discussed in *South Carolina Hwy. Dept. v. Barnwell Bros.*, 303 U.S. 177, 189. There it was again affirmed that although regulation by the state might impose some burden on interstate commerce this was permissible when "an inseparable incident of the exercise of a legislative authority, which, under the Constitution, has been left to the states." In the absence of controlling language to the contrary—and there is none—the Federal Motor Carrier Act should not be brought into conflict with this reiterated doctrine.

The challenged decree must be affirmed.

Mr. Justice BUTLER took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

MICRO CARD

TRADE

MARK



22

39



1025

65

